

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

JUSTIN DANIEL AUTREY,

Plaintiff,

v.

SGT BAUM and JOHN DOE,

Defendants.

NO: 2:15-CV-348-RMP

ORDER DENYING MOTION,
ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING FIRST AMENDED
COMPLAINT

1915(g)

BEFORE THE COURT is Magistrate Judge Rodgers' Report and Recommendation to dismiss Plaintiff's First Amended Complaint with prejudice, ECF No. 11. Specifically, Plaintiff had presented no facts from which the Court could infer that Defendant Baum or the John Doe Defendant acted with deliberate indifference to Plaintiff's health or safety, *Farmer v. Brennan*, 511 U.S. 825, 834, 837 (1994), and any claim regarding negligent food preparation would not be actionable under 42 U.S.C. § 1983. *Davidson v. Cannon*, 474 U.S. 344, 347–48 (1986).

ORDER DENYING MOTION, ADOPTING REPORT AND RECOMMENDATION
AND DISMISSING FIRST AMENDED COMPLAINT -- 1

1 Plaintiff is a *pro se* prisoner proceeding *in forma pauperis* and is currently
2 housed at the Washington Corrections Center in Shelton, Washington. Defendants were
3 not served in this action. Rather than file Objections, Plaintiff submitted a Motion and
4 Declaration for Extension of Time to Amend, ECF No. 12. The Motion was considered
5 without oral argument on the date signed below.

6 Plaintiff states that he was moved to a new facility and claims to have missed a
7 deadline to amend his complaint. Plaintiff's First Amended Complaint, ECF No. 8,
8 however, was received on February 11, 2016, and has already been considered by the
9 Court. Therefore, **IT IS ORDERED** Plaintiff's Motion, ECF No. 12, is **DENIED as**
10 **moot.**

11 There being no objections, **IT IS ORDERED** the Report and Recommendation,
12 ECF No. 11, is **ADOPTED in its entirety** and the First Amended Complaint, ECF No.
13 8, is **DISMISSED with prejudice** for failure to state a claim upon which relief may be
14 granted under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

15 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings
16 three or more civil actions or appeals which are dismissed as frivolous or for failure to
17 state a claim will be precluded from bringing any other civil action or appeal *in forma*
18 *pauperis* "unless the prisoner is under imminent danger of serious physical injury." 28
19 U.S.C. § 1915(g). **Plaintiff is advised to read the statutory provisions under 28**
20 **U.S.C. § 1915. This dismissal of Plaintiff's complaint may count as one of the three**

1 dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to
2 file future claims.

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
4 Order, enter judgment, forward copies to Plaintiff at his last known address, and close
5 the file. The District Court Executive is further directed to forward a copy of this Order
6 to the Office of the Attorney General of Washington, Criminal Justice Division. The
7 Court certifies any appeal of this dismissal would not be taken in good faith.

8 **DATED** this 9th day of May 2016.

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10 *s/ Rosanna Malouf Peterson*
11 ROSANNA MALOUF PETERSON
United States District Judge
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